IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8499 OF 2004

Shri Sharad Shivram Nagaonkar & Anr. ...Petitioners
V/s.
Shri Ramakant Narayan Saravade & Ors. ...Respondents

Shri A.A. Kumbhakoni with shri A.P. Kulkarni for the Petitioners.
Shri M.D. Parab i/b. Shri A.K. Suryawanshi for Respondent No.2.

CORAM : V.M. KANADE, J.

DATED : MARCH 5, 2007

P.C. :-

1. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

2. The petitioners are challenging an order passed by the trial court whereby a Court Commissioner was appointed to take inspection of premises and to submit a report.

3. The learned Counsel for the petitioners has submitted that firstly, it amounted to permitting the plaintiff to collect evidence and secondly, person of the plaintiff’s choice was appointed. The Court

Commissioner has already taken inspection and has submitted a report. The learned counsel for the petitioners submits that the Court Commissioner has made certain observations which are totally uncalled for as his job was only to make a survey and give a report. He relied upon a Judgment of the Orissa High Court in the case of **Basanta Kumar Swain v. Baidya Kumar Parida and others (AIR 1989 ORISSA 118)**.

4. Since the Court Commissioner has already tendered his report, it is open for the petitioners to challenge the report by filing their affidavit. Under the circumstances, I do not see any reason to interfere with the impugned order.

. Writ Petition therefore, is rejected.

(V.M. Kanade, J.)